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Senate Energy & Technology Committee  
Exhibit No. 6  
Date 3-24-2009  
Bill No. HB 584

March 23, 2009

Senator Jerry Black, SD 14  
Montana Senate  
P.O. Box 200500  
Helena, MT 59620-0500

**RE: Opposition House Bill 584 – Siting Process for Wind Energy**

Dear Senator Black:

Thank you for inviting Horizon Wind Energy's testimony. Horizon Wind Energy develops, constructs, owns, and operates wind farms throughout the United States. Horizon is the third largest owner of wind farms in the United States.

HB 584 proposes changes to siting criteria in Montana. As drafted the bill would create an inconsistent permitting environment that would threaten the kind of predictability we as a business depend on. In addition much of the language is vague. In our experience developing in other states, lack of specificity in legislation can stop a project in its tracks.

In addition to the voluntary nature of the bill the following specific sections are troubling.

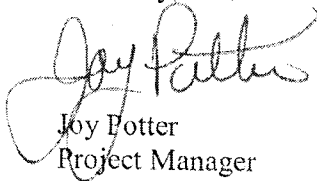
- 1- The language in both the definitions section and the duties section is very vague. Some of it appears to be intentionally misleading. The term "critical habitat" has specific statutory meaning for USFWS, and this bill refers to "crucial wildlife habitat." The latter is not statutorily defined, and is very loosely defined in the bill as having "large numbers of birds and wildlife" or "concentrated" numbers of sage grouse. This is too open to interpretation by two-thirds of a certification committee with little to no experience in wildlife issues.
- 2- The definition of "sensitive areas" includes sites already protected under MEPA, NEPA, and various state and federal environmental regulations, so it begs the question as to why this bill is necessary. This makes us leery that a large door may be opened by the "including but not limited to" clause. Coupled with the issues noted above, the certification committee could expand the areas of protection to anything they felt were "significant."
- 3- The panel itself seems imbalanced. It would be made up of four wind generators, four wildlife representatives, and four historic/cultural resource representatives . . . plus additional members at the discretion of the Director. With this final allowance, there is great opportunity for the

committee to be even more imbalanced at the whim of a biased Director. It may also be optimistic to presume that a wind developer would represent the interests of the industry, and not use this position as a tool to thwart the efforts of a competitor.

Horizon is highly committed to environmentally sound energy development in Montana, as demonstrated by our recent work on the Martinsdale wind farm project. Our concern as an energy generator is that the regulatory and permitting process be open and predictable, and that industry and the public know what is expected for successful project development.

Thank you again for the opportunity to participate in this important process, and for your dedication to the State of Montana.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joy Potter". The signature is written in dark ink and is positioned above the printed name and title.

Joy Potter  
Project Manager

## Jerry Black

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**From:** Bill Alexander [balexander@naturener.net]  
**Sent:** Monday, March 23, 2009 11:02 AM  
**To:** Jerry Black  
**Subject:** RE: voluntary wind certification program

Jerry,  
I believe, at Naturener, we understand clearly the balance between large-scale wind project development and the need to preserve natural and cultural resources. If not planned well, a wind project can certainly have a negative impact on the environment. As I understand it, HB-584 is proposing a voluntary process and a review board for every project to present their project design and environmental and cultural studies. This is certainly one way to address the concern. Unfortunately, we do not think this is the best approach.

Having built large-scale projects in many different jurisdictions, our staff has the benefit of working in a variety of regulatory processes across areas of North America and Europe. Based on this experience, we have a recommendation to the State of Montana about the best processes we have encountered in this regard. I will discuss our perspective on both.

### Contemplated Process:

When a panel of people from different companies, backgrounds and perspectives is convened to review such a project, invariably the panel turns into a review board to find issues with the project. Over time, this process turns into a panel that has 100 ways to say no and few ways to approve projects. For a development company to properly prepare for such a review, many months of work are needed to satisfy all the issues that can be raised. Often the result is repeated questions and answers back and forth, and repeated meetings for review. The entire process is time consuming and expensive for everyone and usually results in smaller developers running out of funds before the process is complete.

As for being voluntary vs. mandatory, it would be unfortunate if a project voluntarily came to the board, was reviewed and declined and chose to proceed anyway. This action opens the door for lawsuits from any environmental group at any time in the future. The risk that places on a project will most likely prevent the project from being eligible for financing.

In summary, this is the most expensive option for all involved and results in far fewer projects being built.

### \* Recommended Process:

Instead of the contemplated approach in HB-584, we recommend a set of published guidelines for wind project development. The most successful regions of the country have studied the possible impacts and published a set of requirements, restrictions or setbacks and procedures for construction. If Montana were to take such an approach, a development company would know clearly the restricted areas and precautions required in any given area. And, knowing this before spending millions of dollars on development will result in more high-quality, financeable projects being developed in Montana.

For example, if the Department of Fish, Wildlife and Parks were to publish a setback required for wetlands, streams, etc. it would be clear what was out of the question. If they were to publish setbacks or use restrictions for areas of nesting birds, native grasslands, etc, the rules would be clear. And if the setbacks for cultural and historical artifacts/sites were well defined, developers would be able to avoid those areas easily. In such a process, and exceptions the developer would want could then be brought before a review committee for consideration.

In summary, the process should be defined and have an exception process rather than a full open review of every case. The process contemplated in the bill often results in unfair or inconsistent treatment of projects. That could result in driving development activity away from the area – which is completely opposite of the intended effect.

**Nowakowski, Sonja**

**From:** Chuck Magraw [c.magraw@bresnan.net]  
**Sent:** Tuesday, March 24, 2009 2:42 PM  
**To:** Nowakowski, Sonja  
**Subject:** wind siting bill

Sonja: please distribute this to members of Senate Energy.

This concerns Representative Noonan's bill regarding wind siting.

At the hearing inferences were drawn from the fact that no wind developers were present at the hearing.

For the record I want to say that, while I do not represent wind developers I do represent an organization that has as its members wind developers, I did support the bill in the House. I was unable to attend the Senate hearing.

I believe that while renewable energy development is critical, that development should be responsible and well sited. I think Rep. Noonan's bill is a first step towards developing such a policy and process in Montana.

Thank you.

Chuck Magraw

3/24/2009